IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15869 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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HIMMATLAL VIRJIBHAI MAKHECHA - Petitioner(s)

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION & 1 - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner(s) : 1,MR NIRDOSH H RATHOD for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 06/03/2006

ORAL JUDGMENT

1. Rule. Mr. H.S.Munshaw, learned Advocate waives service of Rule on behalf of respondents. At the joint request of the learned Advocates for the parties, the

petition is taken upon for final disposal today.

2. In the present petition, the petitioner has challenged an order dated 28.11.2001 passed by Gujarat State Road Transport Corporation. By the said order on account of alleged misappropriation of funds of the Corporation by the petitioner, the respondents have ordered recovery of a sum of Rs. 2,22,780/- (Rupees Two Lakhs Twenty Two Thousand Seven Hundred and Eighty only) from the retiral benefits payable to the petitioner. The petitioner has retired having crossed the age of superannuation with effect from 31.01.2002. It is not in dispute that respondents have withheld the entire post retiral dues of the petitioner which includes his Provident Fund, Gratuity, Leave Encashment, arrears of pay etc. Details of such amounts are given by the respondents in their affidavit-in-reply dated 12.07.2005. Mr. Munshaw, learned Advocate for the respondents agreed that sole reason for withholding of retiral dues of the petitioner is the recovery to be made pursuant to the impugned order dated 28.11.2001.

3. With respect to the challenge to the impugned order learned Advocate Shri Rathod for the petitioner submitted

that the petitioner would like to challenge the same before the Industrial Tribunal. He does not press for petitioner's challenge to the penal recovery.

4. The respondents however, cannot withhold the entire post retiral benefits of the petitioner solely on account of recovery sought to be made pursuant to the order dated 28.11.2001. Therefore, by moulding the relief while permitting the petitioner to pursue his challenge against the impugned order before the Industrial Tribunal, the respondents are directed to release the post retiral dues of the petitioner minus recovery sought to be made within a period of two months from the date of receipt of a copy of this order. With these directions, the petition is allowed and disposed of accordingly. Rule is made absolute to the limited extent. No order as to costs.

[Akil Kureshi, J.]

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